IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.2600 of 2006

M/s.Silicon (India) Ltd.,
19, Marshalls Road,
Raja Annamalai Building,
Egmore,
Chennai-600 008. ..Appellant

Vs

The Deputy Commissioner of Income Tax,
Company Circle IV (6),
No.121, Nungambakkam High Road,
Chennai-600 034. ..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai, 'B' Bench dated 13.03.2006 in I.T.A. No. 517/Mds/2002 for the assessment year 1998-99 filed against order dated 26.2.2002 in ITA No.497/2001-02 on the file of the Commissioner of Income Tax (Appeals)V, Chennai-34 against the order dated 20.3.2001 in PAN/GIR No.2002-S on the file of the Dy. Commissioner of Income Tax, Company Circle IV (6) Chennai-6.

For Appellant : Mrs.Anitha Sumanth

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed by the Revenue under Section 260A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, Chennai, 'B' Bench dated 13.03.2006 in I.T.A. No.517/Mds/2002, raising the following substantial questions of law:

1. Whether on facts and in the circumstances of the case, the ITAT is right in law in rejecting the appellant's claim for sponsorship expenditure?

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. Whether on facts and in the circumstances of the case, the ITAT was right in law in not noting the various distinguishing factors between CIT Vs. RKKR Steels Ltd. and the instant case.

2. The brief facts leading to the above questions of law are as under:

The assessee is a Private Limited Company engaged in the manufacture of silicon and other chemicals. The relevant assessment year is 1998-99 and the corresponding accounting year ended on 31.03.1998. The assessee filed Return of income on 30.04.1998 declaring a total loss of Rs.18,05,749/-. The Return was processed under Section 143(1)(a) on 09.09.1999. Subsequently, the case was selected for scrutiny and notice under Section 143(2) of the Income-tax Act ("Act" in short) was issued. The Assessing Officer completed the assessment under Section 143(3) and disallowed the claim of entire loss and declared total income as Nil. While completing the assessment, the Assessing Officer disallowed the claim of the assessee relating to Training Expenses of Rs.17,12,513/- on the ground that it is not related to business. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) disallowed the appeal and confirmed the order of the Assessing Officer. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the appeal and confirmed the orders of the lower authorities.

3. Learned counsel appearing for the assessee contended that the assessee sent the employee to higher studies to undergo training abroad and such training was very useful to the business of the assessee. Hence, the expenditure incurred is an allowable deduction. The mere fact that the person who was sent abroad is the son of the Director of the Group Company, should not be resulted in denial of the benefit of deduction. It was further contended that there was an agreement entered by the assessee company with one Shri. Vedanth Jhaver by which, the assessee company sent Shri. Vedanth Jhaver for higher studies to U.S.A. As per the agreement, the assessee company has to pay the entire cost of his studies, on condition that the said Shri.Vedanth Jhaver should come back and serve the company for a minimum period of ten years. In pursuance of the above, Shri Vedant Jhaver was sent abroad and hence, the amount is incurred for the purpose of the business. The learned counsel further submitted that the Tribunal is wrong in dismissing the appeal by following a decision of this Court reported in 258 ITR 306 in the case of Commissioner of Income-tax Vs. R.K.K.R. Steels P. Ltd., wherein the facts of the said case are totally distinguishable from the facts involved in the present case.

4. Heard the counsel. On a perusal of the records, it is seen that the assessee has not commenced its business till 31.03.1998. The actual business of the assessee was commenced on

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

07.12.1999. There was an agreement entered into, with one Shri Vedanth Jhaver by the assessee company and the assessee company sent him for higher studies to U.S.A. As per the agreement, the assessee company agreed to pay the entire cost of his studies and in turn, the said Shri Vedanth Jhaver, after completion of his studies, should come back and serve the assessee company for a minimum period of ten years. It is seen from the records, that the assessee company had only employed three persons and paid a total salary of Rs.22,180/-. But, after a perusal of the said agreement, the authorities below were of the view that, it is only a self-serving document. One of the clauses of the agreement stipulates as follows:

> "whereas the assessee company has various manufacturing interests and in view of larger labour turnover in supervisory cadre, the company always finds itself in need of replacement among its engineering and supervisory staff".

From this fact, it is clear that though the agreement says that the assessee company is in need of tackling the need of larger labour turnover, that too in supervisory cadre, for the relevant period, the assessee company has employed only three persons and paid only a total salary of Rs.22,180/-. Hence, it is evident that the assessee company was not facing any problem of labour turnover. Also, the finding of the lower authorities was that, the assessee had sent Shri. Vedanth Jhaver for short time course to augment his technical competence, but the said Shri Vedanth Jhaver has joined a full fledged Master's Course of Engineering Degree Programme in Computer Science which could not be termed as training course. The lower authorities also taken note of the fact that the said Shri Vedanth Jhaver was introduced by his father Shri. J.K.Jhaver who was the Director of one of the Group Companies, namely, M/s.ZIP Industries Ltd. and from June 2000 Shri J.K.Jhaver has become Director in M/s.Southern Group Industries P. Ltd., which is another Group Company. Further it is seen that the assessee company had received unsecured loan from M/s.Southern Group of Industries P. Ltd., at Rs.20,18,338/- and has also utilised the same to meet the study expenses of Shri Vedant Jhaver. The Tribunal rightly rejected the contention of the assessee, by relying on this Court judgment reported in 258 ITR 306 in the case of Commissioner of Income-tax Vs. R.K.K.R. Steels P. Ltd. The only argument of the counsel is that, there was an agreement entered between the assessee company and the said Shri.Vedanth Jhaver, but there is no such agreement in the judgment relied on by the Tribunal, cited supra and hence, the ratio of that judgment is not applicable to the facts of the present case. The presence or absence of an agreement does not make any difference. The relevant fact is that the expenditure should be incurred for the purpose of the business. In the case of M.Subramaniam Bros. Vs. Commissioner of Income-tax, reported in 250 ITR 769, this Court had an occasion to consider a similar expenditure incurred in connection with the training of one of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

sons of the partner. In that case, the person who was sent abroad is the son of a partner and also there was an agreement entered into, between the partners, in which this Court held as follows:

> "The terms of the agreement cannot be decisive as to the true intent and purpose of the arrangement. The firm is one founded by the father T.V. Subramaniam. He had admitted his children even when they were minors to the benefit of the partnership. The children continued their studies even after attaining the age of majority. The fact that one of the sons Viswanathan was sent abroad for further study, cannot be regarded as a deputation made by the firm of one of its partners in connection with the business of the firm. It was in substance, only a step taken by the father who is naturally interested in giving the best possible education to his son, and had sent him abroad to get a higher degree after he completed his B.Com. and M.Com. in India. The agreement that was drawn up was merely one which was intended to give a colour of commercial expediency and was rightly not relied upon by the Tribunal.
>
> Counsel for the assessee invited our attention to the decision of the Madhya Pradesh High Court in the case of CIT v. Kohinoor Paper Products [1997] 226 ITR 220 wherein the court upheld the deduction claimed by the firm, of the expenses incurred in educating one of the partners of the firm abroad for three years. Having perused that judgment, we are unable, with great respect, to agree with what has been held therein.
>
> We find ourselves in agreement with the approach of the Bombay High Court in the case of CIT v. Hindustan Hosiery Industries [1994] 209 ITR 383 wherein the facts were somewhat similar. There also, the son of a partner aged 21 was sent abroad to obtain a degree in business management and the expenditure on his education claimed as deduction was negatived by the High Court holding that the expenditure was of personal nature and not business expenditure."

The principles enunciated in the above cases, have been rightly followed by the Tribunal in the present case. The important factors emerging from the present case are as follows:

a) The expenses incurred for training of a person abroad, who is the son of the Director of the Group Company.

b) The assessee company had received unsecured loan from

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

M/s.Southern Group of Industries P. Ltd., at Rs.20,18,338/- and used the same for education purpose.
c) Business not commenced till 31.03.1998.
d) It is not the case sending a person to acquire technical competency, but the said person has joined a full fledged Master's Course of Engineering Degree Programme in Computer Science which could not be termed as training course.
e) No materials or evidence or any compelling reason given as to how the higher studies is indispensable for the company.
The above factors were considered by the lower authorities and they have arrived at a correct conclusion that the expenditure incurred for training is not a business expenditure. Also, there is no material to show that there is a commercial expediency or business necessity for sending Shri. Vedanth Jhaver abroad. The reasons given by the lower authorities were based on materials and evidence and the Tribunal has correctly followed the principles enunciated by this Court judgments cited supra.

5. In view of the foregoing reasons, we find no error or legal infirmity in the order of the Tribunal and the same does not require interference. Under these circumstances, no substantial questions of law arise for consideration of this Court and accordingly, the tax case is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

km

To

1. The Deputy Commissioner of Income Tax,
Company Circle IV (6),
No.121, Nungambakkam High Road,
Chennai-600 034.

2. The Assistant Registrar
Income tax appellate Tribunal,
Rajaji Bhavan, Besant Nagar, Chennai.

3. The Income Tax Appellate Tribunal B Bench, Chennai.
4. The Commissioner of Income Tax (Appeals)V, Chennai-34.

1 cc to M/s. Dr. anita Sumanth, Advocate, sr. 59852

Tax Case (Appeal) No.
2600 of 2006

SSV (CO)
kk 12/1

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/